

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

---

No. 6:22-cv-00347

---

**Mickey Don Butler,**  
*Plaintiff,*

v.

**Lieutenant FNU Evens et al.,**  
*Defendants.*

---

**ORDER**

Plaintiff Mickey Don Butler, an inmate of the Texas Department of Criminal Justice, proceeding pro se and *in forma pauperis*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell. On July 10, 2023, the magistrate judge issued a report recommending that defendants' motion for summary judgment be granted and this case be dismissed due to the plaintiff's failure to exhaust his administrative remedies as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). Doc. 34. Plaintiff submitted a letter that the court construes as a written objection to the July 10, 2023, report and recommendation. Doc. 35.

The court reviews the objected-to portions of a magistrate judge's report and recommendation de novo. *See* Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1). The magistrate judge recommended dismissal because defendants submitted evidence of plaintiff's grievance history that established that he did not exhaust the administrative remedies available. Objecting to the report and recommendation, plaintiff refers to grievance #2022010961, which he alleges the defendants "conveniently lost." Doc. 35. He claims to have a copy of the grievance on his tablet but no way to submit it to the court. *Id.* But both the defendants and the magistrate judge thoroughly addressed this grievance, about which the grievance officers maintained some records but not an actual scan. For the reasons explained by the

magistrate judge, it is clear from the maintained records that grievance #2022010961 was improper under prison grievance rules, did not complain of the use of force, and was not appealed. Doc. 34 at 3–4, 7. In his objection, plaintiff does not dispute that assessment or provide any contrary description of the document. Doc. 35.

Having reviewed the magistrate judge’s report de novo, and being satisfied that it contains no error, the court overrules plaintiff’s objections and accepts the report’s findings and recommendation. The defendants’ motion for summary judgment (Doc. 27) is granted, and this case is dismissed without prejudice for failure to exhaust administrative remedies. 42 U.S.C. § 1997e(a).

*So ordered by the court on August 22, 2023.*

A handwritten signature in black ink, appearing to read "J. Campbell Barker", is written over a horizontal line.

J. CAMPBELL BARKER  
United States District Judge